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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR        | ATTORNEY DOCKET NO.  | CONFIRMATION NO. |
|---|-------------|-----------------------------|----------------------|------------------|
| 10/821,198  | 04/08/2004  | Donn E. Gabrielson          | 65744/P021US/Pending | 8203             |
| 29053 7590 07/09/2008<br>FULBRIGHT & JAWORSKI L.L.P.<br>2200 ROSS AVENUE<br>SUITE 2800<br>DALLAS, TX 75201-2784 |             |                             |                      |                  |
| EXAMINER<br>NADKARNI, SARVESH J   |             |                             |                      |                  |
| ART UNIT<br>2629  |             | PAPER NUMBER                |                      |                  |
| NOTIFICATION DATE<br>07/09/2008   |             | DELIVERY MODE<br>ELECTRONIC |                      |                  |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

smercedes@FULBRIGHT.COM

**Advisory Action  
Before the Filing of an Appeal Brief**

|  |  |
|--|--|
| <b>Application No.</b><br>10/821,198   | <b>Applicant(s)</b><br>GABRIELSON ET AL. |
| <b>Examiner</b><br>SARVESH J. NADKARNI | <b>Art Unit</b><br>2629                  |

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 24 April 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-16, 18, 19, 21-34 and 39-44.  
Claim(s) withdrawn from consideration: 17, 20 and 35-38.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☒ Other: See Continuation Sheet.

/Amare Mengistu/  
Supervisory Patent Examiner, Art Unit 2629

/Sarvesh J. Nadkarni/  
Examiner, Art Unit 2629

Continuation of 13. Other: Examiner has considered the Amendment After Final and Applicant's submitted interview summary record and is withdrawing the finality of the previous Action dated January 24, 2008, with one caveat. Examiner objects to "Applicant's Record under Section 713.04 of Telephone Interview with Examiner", particularly page 9, rejection of claim 21 under 35 U.S.C. section 112 second paragraph. As discussed during the interview, Examiner takes issue with the phrase "user perceives a depth of gray levels beyond what is available in gray scale on said color display" because it is subject to varying interpretations and does not create adequate boundaries or quantification to determine what is available beyond gray scale. In Applicant's Amendment dated July 19, 2007, Applicant's attorney contends the specification at page 5, paragraph [0019] lines 5-9 and page 7, paragraph [0023] lines 21-22 adequately explains what is meant by the language in question. Examiner respectfully disagrees. Applicant's attorney's reference to the sections of the specification does not provide adequate insight as to how to interpret the language in question. These sections merely explain a method of driving intensities to achieve gray levels achievable and available by the color display that fall in between gray levels but do not provide sound interpretation to what is meant by "beyond what is available gray scale on said color display". Simply stated, the phrase "beyond what is available in gray scale on said color display" would lead one of ordinary skill to reasonably interpret the display is achieving a gray scale that is unavailable for displaying. Additionally Examiner cannot read limitations into the claim from the specification; such interpretation would be improper claim construction. Therefore, claim 21 stands as rejected.

Examiner suggests the language "beyond what is available in gray scale" to be replaced with "in between gray levels to create additional pseudo gray levels". This language is supported by the specification at the above mentioned sections submitted by Applicant's Attorney.

Examiner will submit a Non-Final Action in response to, and compliant with the above discussed consideration. No additional correspondence is needed from Applicant or the Applicant's Attorney until receipt of the next Office Action. If Applicant or Applicant's attorney wishes to discuss this matter further, please do not hesitate to contact the Examiner at the following number: 571-270-1541.